IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1799 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL JIVRAM

Versus

HIRALAL TULSIDAS

Appearance:

MRS KETTY A MEHTA for Petitioners

MR SN SOPARKAR for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 31/03/2000

ORAL JUDGEMENT

#. This is tenant's revision under Section 29(2) of the Bombay Rent Act (for short `Act') against the judgment and decree of the lower court directing eviction of the revisionist from the suit accommodation.

#. The list has been revised thrice but none appeared on

behalf of the landlords respondents. As such Ms.Ketty A. Mehta for the revisionist was heard and the judgments of the two court below were examined, so also the plaint on the record.

#. The brief facts giving rise to this revision are that the landlords respondents filed a suit for eviction of the revisionist on the ground that the tenant-in-chief defendant No.1 had unlawfully sublet, assigned or transferred the suit premises to the defendant No.2. The other ground for eviction was that the defendant No.1 tenant has built a building and thereby acquired vacant possession of a suitable residence after coming into operation of the Act. The arrears of rent were also claimed from the defendant No.1. The plaintiffs alleged that the defendant No.1 was tenant on the first floor of the demised premises on monthly rent of Rs.55/- per month. It was specific case of the plaintiff that the defendant No.1 was let out the demised premises on 1-8-1979 for residence only. A rent note was executed in favour of the plaintiffs. Since the plaintiffs required the disputed accommodation reasonably and bonafide for their personal use and occupation, suit for eviction of the defendant No.1 along with sub tenant was filed. Arrears of rent were demanded through a notice which was served on the tenant. The tenant was in the arrears of rent since 1-1-79.

#. The suit was resisted by the defendants revisionists on the ground that contractual rent of Rs.55/- per month is not standard rent and that standard rent cannot exceed Rs.20/- per month which was being paid by the previous tenant. The dispute of the standard rent was thus raised by the revisionists. The allegation of sub tenancy was also denied by the revisionists. It was also denied that the disputed accommodation was reasonably and bonafide required by the landlords for their personal use. It was pleaded that the plaintiffs reside at Bombay and have settled at Bombay and therefore, alleged requirement for personal use by the plaintiffs is neither reasonable nor bonafide. The allegation of sub tenancy was also denied by the revisionist. It was pleaded that the defendant No.2 is the family member of the defendant No.1 and after marriage, she continued to stay with the defendant No.1 as family member along with her blind husband. No rent was charged by the defendant No.1 from the defendant No.2. It was further pleaded that two sons of the tenant were unmarried. The tenant was experiencing inconvenience in the suit premises and as such, to minimize the inconvenience, the tenant built a house in Kalpana Society and two married sons of the tenant reside

in the said newly built accommodation. It was denied that the defendant No.1 and his wife also reside in the building in Kalpana Society. On the other hand, they pleaded that they are residing with their daughter in the suit premises. It was also denied that the premises was let out only for residence. On the other hand, it was pleaded that the premises was let out for the purpose of residence and business and it was so used right from the beginning. It was pleaded that the entire rent was paid.

#. The trial court fixed the standard rent at Rs.55/per month. It further found that Rs.110/- were due from the defendant No.1 as arrears of rent. Consequently, decree for this amount was passed. The suit for possession from the tenant was dismissed.

#. Feeling aggrieved, landlords preferred the appeal in the court below. The appellate court allowed the appeal and after setting aside the judgment and decree of the trial court, decreed the suit for possession of the suit accommodation. It is therefore this revision.

#. Since none appeared from the side of the landlords respondents, there was no option but to hear the learned counsel for the revisionist. After hearing the learned counsel for the revisionist and examining the record, I find that the trial court dismissed the suit for eviction by recording finding that the disputed accommodation was not required reasonably and bonafide by the landlords. The allegation of subletting was also not found proved by the trial court. The trial court further found that the tenant admittedly built a new house but it was not sufficient for accommodating his family members and it was not suitable accommodation. The question of comparative hardships was also considered and it was answered against the landlords.

#. The appellate court agreed with the finding of the trial court on issues of subletting and bonafide and reasonable requirement of the suit accommodation by the landlords. However, the appellate court found that the tenant had built a suitable accommodation for his residence and since he has shifted along with his wife etc. and is occupying newly built house, the suit filed was liable to be decreed. The appellate court reversed and set aside the entire decree of the trial court meaning thereby that it was impliedly of the view that the tenant was not in arrears of rent, though factually the trial court found that the tenant was in arrears of

rent amounting to Rs.110/- .

#. The learned counsel for the revisionist contended that it is not clear from the plaint whether eviction was also sought either on grounds contained in Section 13(1)k) or under Section 13(1)(l) of the Act. She referred to para 4 of the plaint, in which, two allegations have been made. The first is regarding illegal subletting. The second is that the defendant No.1 has not been residing in the said rented premises. He has vacated the suit rented premises and has gone to reside in the newly built bunglow in Kalpana Society and that the defendant No.1 does not require the suit premises and therefore, the defendant No.1 is bound to vacate the same and hand over vacant possession thereof. From this vague allegation, it is difficult to make out whether the plaintiff interalia wanted eviction under Section 13(1)(k) or under Section 13(1)(l). However, the trial court framed issue No.4 which seems to be under Section 13(1)(l) of the Act. This issue was answered by the trial court in favour of the revisionist.

##. It is an admitted case of the revisionist that new building was constructed by him in Kalpana Society. However, that is not enough nor it could be enough for the appellate court to grant decree for possession. The requirement of Section 13(1) (l) is that the tenant after coming into operation of this Act has built, acquired vacant possession of or been allotted suitable residence. The emphasis under this provision is that the tenant should have either built or acquired vacant possession or has been allotted residence which is suitable for his purposes. Suitability of alternative accommodation for the tenant should have been considered by the appellate court but it seems from the judgment that it was not considered in proper perspective. The appellate court should have considered the extent of accommodation under the tenancy of the defendant No.1 and should have also considered the number of members in the family of the defendant No.1 on the date of the institution of the suit. The emphasis of the appellate court has been that if the tenant and his family members could be conveniently accommodated only in one room, then, there was no reason why they could not be comfortably accommodated in three rooms in the newly built up house. Three rooms of the disputed accommodation were considered by the appellate court which found that two rooms could not be used for residence and it was only one room which could be used and was used for residence by the defendant No.1 and he was residing along with his family members. The trial court found that in the disputed accommodation

the defendant No.1, his two married sons along with their wives, the daughter and blind son-in-law were residing. The trial court further found that there were in all four couples in the family of the defendant No.1 namely one defendant and his wife, two married couples of sons of defendant No.1 and one married couple of daughter of defendant No.1. It was also in the evidence that there was one minor son who must have attained majority and might have been married by now. There were also children of married sons of the defendant No.1. Both the married sons had one child each as has come in the finding of the trial court. In all, the trial court found that there were 14 members in the family of the defendant No.1. This fact was not considered by the lower appellate court. On the other hand, the lower appellate court was impressed by the fact that since in one room, the tenant could accommodate his family, there was no reason why he could not comfortably accommodate his family members in the newly built house. This finding of the lower appellate court, to my mind, has been totally erroneous. On the other hand, from the findings of the trial court, it seems that one room accommodation was quite insufficient and if with a view to accommodate comfortably all the family members, the tenant - the defendant No.1 constructed another house comprising of three rooms, it cannot be said that 14 members could conveniently be accommodated comfortably in three rooms, more particularly, after marriage of two sons and daughter and birth of grand children.

##. It is also not cogently established that the defendant No.1 and his wife along with two sons have shifted to the new house. On the other hand, there is evidence that the defendant No.1 and his wife are still residing in the disputed accommodation. Consequently, the basic requirement of Section 13 (1) (l) is not established and further it is also not established that the accommodation newly built by the defendant No.1 is suitable for accommodating all the family members numbering 14 or more than 14 by now. As such decree for eviction passed by the lower appellate court cannot be sustained. Likewise, refusal of decree for arrears of rent by the appellate court also seems to be illegal. It has not given reasons for differing from the decree passed by the trial court regarding the arrears of rent.

##. In view of aforesaid discussion, the judgment and decree of the lower appellate court cannot be sustained. The revision therefore succeeds and is allowed accordingly. The judgment and decree of the lower appellate court are set aside and that of the trial court

are restored with no order as to costs.

Date : 31-3-2000 [D.C.Srivastava, J.]

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